

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT SILER,

Plaintiff,

CIVIL ACTION NO. 08-CV-15077

vs.

DISTRICT JUDGE PATRICK J. DUGGAN

W. BALDWIN, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

_____ /

REPORT AND RECOMMENDATION

I. RECOMMENDATION: This Court recommends that Plaintiff's Motion to Dismiss Defendant John Doe without prejudice (docket no. 88) be **GRANTED**.

II. REPORT:

This matter comes before the Court on Plaintiff's Motion to Dismiss Defendant John Doe without prejudice, filed on February 23, 2010. (Docket no. 88). No response has been filed to the motion and the time for responding has expired. All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). This matter is now ready for ruling.

Federal Rule of Civil Procedure 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time if the plaintiff shows good cause for his failure. Plaintiff filed his complaint on December 9, 2009. (Docket no. 1). Defendant John Doe has not yet been identified or served. Plaintiff now moves the Court to dismiss Defendant John Doe

without prejudice until discovery can be had to identify the Defendant. This Court recommends that the Plaintiff's Motion to Dismiss Defendant John Doe Defendant without prejudice be granted.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as "Objection #1," "Objection #2," etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than fourteen days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as "Response to Objection #1," "Response to Objection #2," etc.

Dated: April 27, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Robert Siler and Counsel of Record on this date.

Dated: April 27, 2010

s/ Lisa C. Bartlett
Case Manger